

My name is Lisa Crawford. I am the president of F.R.E.S.H., Inc. (Fernald Residents for Environmental Safety & Health). F.R.E.S.H. has been a watchdog organization of the Fernald Facility for 17 years. We continue to be good public participants of the clean up process, but also of true and fair treatment of the facilities workforce, ^{both} current and former. We offer the following comments on the "Energy Employees Occupational Illness Compensation Program Act" established in 2000.

Last year, after decades of adamant denial, the U.S. government made a historic acknowledgment: it had put more than 600,000 people who worked in its nuclear weapons facilities and programs in harm's way and, as a result, made many, many people sick. Subsequent legislation gave some workers with certain diseases the right to apply for compensation or medical treatment. It was the most dramatic about-face ever to happen in the nuclear industry.

Since 1942, nuclear workers have worked in many facilities across the country. Some workers in some plants suffered radiation doses so huge that they were "death sentences". Such workers most probably suffered severe kidney damage well before they got cancer, and no dialysis was available to them. There is clear evidence that the safety standards of the time were violated and the government and its contractors colluded to keep that knowledge from the workers.

Now, although it took a lot of courage to make the historic admission of wrongdoing, the U.S. government may squander the goodwill and trust that could accrue from the compensation program. The devil, as usual, is in the details.

Apart from four facilities (the 3 uranium enrichment plants in Tennessee, Kentucky and Ohio, and one test site in Alaska), workers will not be given the benefit of the doubt if they get one of the cancers listed in the law. Instead, they will have to prove that their radiation doses were more than likely not the cause of the listed cancers. For many or most of the workers, this is likely an impossible task thru no fault of their own. Worker dose

records at many of these plants are incomplete and in many cases, shockingly deficient. In some cases they may be fraudulent, being tainted by data fabrication. The dose estimates resulting from such records will have huge uncertainties and may remain scientifically indefensible.

Sloppy and incompetent science on health and environmental issues was routine throughout most of the history of nuclear weapons production. For instance, the Department of Energy has admitted that, until 1989, no effort was made to calculate internal radiation doses to workers arising from the inhalation or ingestion of radioactive materials. At the Fernald Plant, located less than 20 miles from where we sit this evening, where uranium for plutonium production reactors was processed, most workers in the 1950's and early 1960's were overexposed due to uranium inhalation, with about 90% being overexposed in 1955.

The pattern of keeping health and environmental abuses about their own people (whether it's workers or community people) secret in the name of "national security" is fundamentally "WRONG" and anti-democratic. It presumes that the people, again whether their workers or community folks, would not make sacrifices for the security of their country. It also presumes that top nuclear bureaucrats can make life and death decisions in defiance of established laws, norms and regulations without the informed consent of the people.

It is very clear to us that all nuclear weapons workers should be given the benefit of the doubt and compensated! Many are sick now and don't have time to wait for bureaucratic procedures to see if their radiation doses can be reconstructed. For large numbers of workers, the poor state of the records makes it very unlikely that even a long, expensive process would result in accurate dose estimates. It is unfair and unjust to impose the burden of proof on workers now, when the government did not do its job well then!

The government should assume the burden of proof. This would help redress some of the harm and set a standard that other nuclear weapons states would do well to follow. The United States should not fitter away a historic opportunity for expanding justice and democracy by example.

Added comments:

First, it is crucial to distinguish what Congress did not do. Congress did not give DOE the specific statutory authority to interpret the standards of up to 50 different state workers' compensation systems. Nor did Congress give the DOE the legal authority to condition the Physicians Panel's review upon this federal agency's interpretation of state law. Furthermore, DOE does not have any legislative direction from Congress to use Memorandum of

Agreements to impose state criteria as a prerequisite to submitting a claim to a Physicians Panel or to impose state criteria for occupational causality on the Physicians Panel. In fact, the DOE proposed rule defies congressional intent by imposing numerous obstacles contained in state workers' compensation programs that Congress sought to circumvent through the federal assistance program in Subtitle D of EEOICPA. *The way to rectify the screwed up Physicians Panel is to have congress add clarifying language to an already very clear statute*

The Bureau of Workers' Compensation for the State of Ohio stated at the May 15th Senate HELP Committee hearing that "while we believe workers' compensation should, without a doubt, be regulated at the state level, this specific instance could benefit from federal assistance."

Senator George Voinovich stated to a panel on the House Judiciary Committee during a hearing on September 21, 2000, that "many of these workers have tried to seek restitution through their state bureaus of workers' compensation. Unfortunately, the vast majority of these claims have been denied....denied because state bureaus of workers' compensation do not have the facilities and/or resources necessary to adequately respond to the occupational illnesses unique to our defense establishment."

Congressman Mark Udall also referred to the need for a "efficient, uniform and adequate system of compensation" in his testimony before the Judiciary Panel.

Congresswoman Marcy Kaptur of Ohio stated, "the only practical compensation program for these workers is a federal program. The numerous differences between state compensation programs would result in

inequitable treatment of workers in similar situations. For fairness sake, a federal workers' compensation program for these workers is imperative. She goes on to state: "the workers suffering from these diseases are a federal responsibility. They worked in our national defense industry. They suffer because of that work.... These Cold War heroes deserve to be compensated for their suffering and their loss, and they should be compensated equitably. That cannot be done if their compensation is determined under 50 different state laws. Equity demands federal jurisdiction."

Beyond statements at hearings, the "Findings" section of the EEOICPA point to the fact that "State workers' compensation programs do not provide a uniform means of ensuring adequate compensation." The law's "Findings" go on to state that considering "fairness and equity" the government should have an "efficient, uniform and adequate compensation" system. The "purpose" section of Section 3611 of the Act restates that position, again emphasizing that the compensation program is to be "timely, uniform, and adequate."

Also, we strongly differ with the DOE proposal to substitute state based criteria for the Physicians Panels to use in establishing causality. The judgment of causality is a medical determination, not a legal determination. The medical, toxicological and biological factors will not vary from state to state. Physicians panels should only base their decisions on medically relevant factors, not legal or administrative inventions.

Final Recommendations:

We recommend that the Program Office only require proof of employment as a pre-requisite for Physicians Panel review when an employee alleges that the illness arose out of exposure to toxic substances.

We also recommend that the rule adopt a revised standard of causation for occupationally induced illness. It should state that the Physicians Panel should determine whether the exposures "contributed, exacerbated, aggravated or caused" the illness or death.

In closing, I must give credit where credit is due. This statement was made possible with the aide of IEER (Institute for Energy & Environmental Research) and GAP (Government Accountability Project). Much data and information has been provided through these and many other organizations across the country on this subject.

I thank you for the opportunity to speak to you regarding this most important and pressing issue. It is now the time for the government to "do the right thing" and take care of its workers and to begin to think about the community residents who live across the fence line from the nuclear weapons facilities across the country. It is now time for the government to "come clean" about the contamination and health issues it has imposed on the American public at large.

Again, thank you.

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